

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN THE MATTER OF KIRBY INLAND	§	CIVIL ACTION NO. 4:22-CV-2464
MARINE, LP AND KIRBY	§	RULE 9(h) ADMIRALTY
CORPORATION, IN A CAUSE OF	§	NON-JURY
EXONERATION FROM OR	§	
LIMITATION OF LIABILITY	§	

**VERIFIED COMPLAINT AND PETITION
FOR EXONERATION FROM AND/OR LIMITATION OF LIABILITY**

COMES NOW, Kirby Inland Marine, LP, as owner of the M/V SANDPIPER, and Kirby Corporation, as parent corporation, (“Kirby” or “Limitation Petitioners”), and files this, their Verified Complaint and Petition for Exoneration From and/or Limitation of Liability. This Complaint is submitted pursuant to Rule F of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure and 46 U.S.C. § 30501 *et seq.* In support of this Complaint, Limitation Petitioners show as follows:

1. This case is within the admiralty and maritime jurisdiction of this Court pursuant to Rule 9(h) of the Federal Rules of Civil Procedure and Rule F of the Supplemental Rules for Certain Admiralty and Maritime Claims.
2. Venue is proper within the United States District Court for the Southern District of Texas, Houston Division pursuant to Rule F of the Supplemental Admiralty Rules of the Federal Rules of Civil Procedure because Kirby Inland Marine, LP and Kirby Corporation have been sued in this district with respect to a claim arising from this vessel. Fed. R. Civ. P. Supp. Admiralty R. F(9).
3. This Complaint is filed within six months of Limitation Petitioners’ receipt of the first written notice of claim and is, therefore, timely filed.

4. At all material times, Kirby Inland Marine, LP was and is a limited partnership formed under the laws of the State of Delaware with its principal place of business in Texas. At all material times, Kirby Inland Marine, LP was the owner of the M/V SANDPIPER. Kirby Corporation is headquartered in Houston, Texas and is a parent corporation.

5. At all material times, the M/V SANDPIPER, bearing USCG No. 1237330, was a 177 gross ton towing vessel of the United States. At all material times, the M/V SANDPIPER was tight, staunch, strong, fully and properly equipped and supplied, in all respects, seaworthy, and fit for the service for which it was engaged.

6. On or about August 29, 2021, Michael Ford, a tankerman, claims he was injured while working on the M/V SANDPIPER “in the Mississippi River near Kenner, Louisiana.” As a result of this claim, Michael Ford has filed suit against Limitation Petitioners in Harris County, Texas. *See Michael Ford vs. Kirby Corporation and Kirby Inland Marine*, No. 2022-05704, in the 133rd Judicial District Court of Harris County, Texas.

7. All alleged resultant losses, injuries, and/or damages, if any, resulting from the incident referenced above were not caused or contributed to by any fault, neglect, lack of due diligence, negligence or want of due care on the part of Limitation Petitioners or of any person for whose acts it is responsible nor was the M/V SANDPIPER in any respect unseaworthy, unsafe, or at fault. To the contrary, the incident referenced above that occurred on or about August 29, 2021, as well as any losses, injuries, and/or damages allegedly sustained by any person, firm, corporation, or legal entity arising out of the incidents were due to and/or caused by the fault, neglect, lack of due diligence, negligence, want of due care, acts and/or omissions of others for whom Limitation Petitioners are not responsible.

8. Limitation Petitioners deny that it or the M/V SANDPIPER or any person or property for whom or which it may be responsible, is liable to any extent in the premises.

9. Limitation Petitioners claim exoneration from all liability for all losses, damages, injuries, and destruction incurred by reason of the matters aforesaid. In the alternative, and in the event Limitation Petitioners and/or the M/V SANDPIPER should be held responsible by reason of the incidents described above, Limitation Petitioners claim the benefits of the Limitation of Liability Act, 46 U.S.C. §§ 30501 *et seq.*, and all laws supplementary thereto and amendatory thereof, because all the losses, damages, injuries, and/or destruction resulting from the aforesaid casualty occurred without the privity or knowledge of Limitation Petitioners.

10. As shown in the Declaration of Value executed by Norman Dufour, attached as Exhibit 1 and incorporated by reference, the value of the M/V SANDPIPER on August 29, 2021, post Hurricane Ida, was \$3,430,000 (THREE MILLION, FOUR HUNDRED THIRTY THOUSAND AND 00/100 DOLLARS).

11. As shown in the Freight Pending Affidavit executed by Renato Castro, attached as Exhibit 2 and incorporated by reference, the value of the freight pending for the M/V SANDPIPER on August 29, 2021 was no more than \$18,876 (EIGHTEEN THOUSAND EIGHT HUNDRED SEVENTY-SIX AND 00/100 DOLLARS).

12. Limitation Petitioners file contemporaneously herewith an *Ad Interim* Stipulation of Value with Letter of Undertaking for its interests in the M/V SANDPIPER at the time of the incident, with interest at the rate of six percent (6%) per annum from the date of the deposit of the security as may be ascertained and determined to be necessary under any orders of this Honorable Court.

13. Pursuant to 46 U.S.C. §§ 30501 *et seq.* and Rule F of the Supplemental Admiralty Rules, Limitation Petitioners are required to furnish security for costs. Accordingly, Limitation Petitioners file simultaneously herewith, a check in the amount of \$1,000.00 in lieu of filing a cost bond to be deposited into the Registry of the Court.

14. To the best of Limitation Petitioners' knowledge, information and belief, no warrant of arrest or any other process of any court has been issued for the M/V SANDPIPER, and the vessel has not been and is not presently under seizure as a result of any claims or demands.

15. Limitation Petitioners claim exoneration and exemption from liability for any and all claims for damages or losses occasioned or incurred, or alleged to have been occasioned or incurred, by reason of the aforementioned incidents.

16. Limitation Petitioners further avers that they have valid defenses to the merits of any and all such claims. Limitation Petitioners specifically claim the benefits of the Limitation of Liability Act, as set forth in 46 U.S.C. §§ 30501 *et seq.* and all statutes amendatory thereof and supplementary thereto.

17. Pursuant to 46 U.S.C. §§ 30501 *et seq.*, Limitation Petitioners are entitled to have all claims and issues concerning the incidents in question consolidated in a single proceeding before the United States District Court for the Southern District of Texas, Houston Division sitting in Admiralty.

WHEREFORE, Limitation Petitioners respectfully pray that:

1. That the Court enter an order approving the aforementioned *Ad Interim* Stipulation of Value with Letter of Undertaking deposited with the Court by Limitation Petitioners as security for the amount or value of its interest in the M/V SANDPIPER.

2. That the Court issue a notice to all persons, firms, associations, or corporations asserting claims with respect to which Limitation Petitioners seek exoneration from, or limitation of liability, admonishing them to file their respective claims with the Clerk of this Court and to serve on the attorneys for Limitation Petitioners a copy thereof on or before the date to be named in the Notice and that if any claimant desires to contest either the right to exoneration from, or the right to limitation of liability, that claimant shall file and serve on the attorneys for Limitation Petitioners an Answer to the Complaint on or before the said date;

3. That the Court enjoin the prosecution of any and all actions, suits or proceedings which may be commenced, of any nature or description whatsoever in any jurisdiction against Limitation Petitioners or any other property of Limitation Petitioners or against Limitation Petitioners' employees or underwriters, except in this action, to recover for damages from or with respect to any bodily injury, death, damage to property or other loss or destruction resulting from the aforementioned incidents, or done, occasioned, occurred, or arising out of said voyage or incidents;

4. That the Court adjudge that Limitation Petitioners are not liable to any extent for the bodily injury, death, or property damage, loss of use or other loss or destruction resulting from the aforementioned incidents, or done, occasioned, occurred, or arising out of said voyage or incidents;

5. Alternatively, and only if Limitation Petitioners shall be adjudged liable, then they pray that such liability for any bodily injury, death, damage, loss of use to property or other loss or destruction and consequence of the said voyage or incident be limited to the amount or value of Limitation Petitioners' interest in the M/V SANDPIPER at the end of said voyage or incidents, and that Limitation Petitioners be discharged therefrom, upon surrender of such

interest and that the money surrendered, paid or secured to be paid, be divided pro rata according to the aforementioned statutes and among the claimants as they duly prove their claims in accordance with the provisions of the Order for which Limitation Petitioners have prayed herein, saving to all parties any priorities to which they may be legally entitled and that decree be entered discharging Limitation Petitioners from all further liability; and that Limitation Petitioners have such other relief as they may be entitled at law, in equity, or in admiralty.

Respectfully submitted,

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